



Andrew Andre

05/12/2003 02:01 PM

To: William Cove/cmg/IRCorp@IRCorp  
cc: Jim Phillips/cmg/IRCorp@IRCorp, Stanley  
Norcross/cmg/IRCorp@IRCorp  
Subject: Re: Customer Support issues for the week  
ending 5-10 [REDACTED]

**REDACTED**

Andrew A Andre  
Ingersoll-Rand Equipment and Services Company  
Southboro, MA 01772 Phone 508 481 1350

William Cove 05/12/2003 01:01 PM

MURRAY  
Mike  
Note →



William Cove

05/12/2003 01:01 PM

To: Andrew Andre/cmg/IRCorp@IRCorp,  
Stanley Norcross/cmg/IRCorp@IRCorp,  
Jim Phillips/cmg/IRCorp@IRCorp  
cc:  
Subject: Customer Support issues for the week  
ending 5-10

OPEN ISSUES SALES

**REDACTED**



William Cove To: Andrew Andre/cmg/IRCorp@IRCorp  
05/21/2003 08:29 AM cc: Larry Spring/cmg/IRCorp@IRCorp, John Sunkenberg/cmg/IRCorp@IRCorp  
Subject: Murray PF4410

Andy : On Friday Arnie stopped in to say the paving day went well. That was the first run with finish and job looked good and the crew paved more than he had planned on that day. Arnie did mention he would like to explore being able to control auger speed at the hand controls. I told Arnie I would have John M. come out next week and see what is going on as he will be paving in Ashland.

Follow-up On Tuesday Arnie called concerned about a broken weld on the end gate, we are sending John M. and the welder out on Wed. morning and will go over auger issue as well .

Arnie also is looking for a control box for the Bobcat Milling attachment, I am not up on this are you?

Bill

---

William Cove  
Ingersoll-Rand Company  
300 Turnpike Road, Route 9  
Southboro, MA 01772  
Phone: 508-481-1350  
Fax: 508-481-2014  
Email: William\_Cove@Ingersoll-Rand.com

**REDACTED**

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**Robert Marchand**  
11/21/2003 08:34 AM      To: Andrew Andre/cmg/IRCorp@IRCorp  
cc: Mike Kemmerer/cmg/IRCorp@IRCorp  
Subject: Murray paving

Andy,

As you may or may not know, Murray paving was brought back for warranty work again. Here is a synopsis of what is going on.

- 1) Lights still acting up, we tightened up associated connections and split load one more time, tested for 2 hours and no problems. Vibration could be a concern here. I have talked to a couple od other customers with the same lighting concerns, machines will be repaired when they give me the go ahead due to their scheduling.
- 2) Auger reostat fell apart, there is a spring that applies pressure to the variable risistor bank, this either fell off or was removed. The problem was intermittent staying operational od the left side feed auger. John installed new reostat and test ran. Readjusted force motors to be safe and no apparent problems.
- 3) Complaint od sticky brake function, checked funtion and switching, no apparent malfunction.

Anything more needed let me know.

Bob

**Mike Kemmerer** To: Andrew Andre/cmg/IRCorp@IRCorp  
10/07/2003 04:35 PM cc:  
Subject: 4410 serial 441032

Andy:

The service history on this machine has several minor issues that have been addressed since delivery in March of 2003. In regard to the Track tension cylinder that we are replacing today this is the first time that part has failed. The Right Track Tension cylinder was replaced in July 23,03 after the air breather which was indicating an internal oil bypass problem was replaced twice to stop the oil leak. Murray Paving contacted us last Wednesday October 1, 2003 and said the Left side was leaking. We told them they would need to bring it by so we could replace the Track Tension Cylinder. The dropped the machine off Thursday morning and before we could begin working on the machine they called to say their Cat paver was down and they were coming to pick this one back up. We told them we would order the cylinder which came on Friday October 3, 2003 and when they brought the machine back we would get right to work. The machine arrived back in the yard on Tuesday October 7, 2003 at which point we went right to work replacing the cylinder. The schedule is to call Murray in the morning October 8, 2003 to schedule a pickup. Please feel free to contact me if you have any questions.

Mike Kemmerer

**PETER F. DAVIS**  
ATTORNEY AND COUNSELLOR-AT-LAW  
50 CONGRESS STREET, SUITE 630  
BOSTON, MASSACHUSETTS 02109

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June 25, 2003

Mr. Peter Schlesinger, President  
Blaw-Knox Division of  
Ingersoll-Rand Co.  
312 Ingersoll Drive  
Shippensburg, PA 17257

And

Mr. Herbert L. Henkel, President  
Ingersoll-Rand Company  
200 Chestnut Ridge Road  
Woodcliff, NJ 07675

Re: Murray Paving & Reclamation, Inc.  
Sales Order No. 641-21990

Gentlemen:

Please be advised that I represent Murray Paving & Reclamation, Inc. ("Murray"), to whom your organization sold a new Blaw-Knox 2003 Model PF-4410 Paver ("the Paver"), as set forth in the above referenced order.

As you have been made aware by Arnold G. Johnson, Jr., President of Murray, the Paver has not operated properly since it was delivered to Murray, and problems with the Paver started on the very first day Murray attempted to use it, and have continued from that date to the present. Despite repairs and modifications made to the Paver by your organization, the Paver continues to fail to operate properly, and cannot be depended upon to perform the tasks for which it was manufactured and sold.

To date, Murray has been deprived of the use of the Paver due to breakdowns and other failures of the Paver, and has suffered many thousands dollars of losses directly attributable to the failure of the Paver to operate properly.

In sum, the Paver has utterly failed to provide the service that a purchaser of new equipment has a right to expect, and in addition, has caused tremendous dollar losses to Murray. Again, you and your organization have, on essentially a daily basis, been made

aware of the problems suffered by Murray in connection with the Paver, and Murray's total dissatisfaction with the Paver.

ALL OF THE FOREGOING CONSTITUTES A BREACH OF THE CONTRACT  
BETWEEN MURRAY AND YOU.

Accordingly, you are hereby notified that Murray elects to RESCIND AND TERMINATE the above referenced sales order and contract.

On behalf of Murray, DEMAND is hereby made that you FORTHWITH take such steps as are necessary to accept a re-delivery of the Paver to you by Murray, and that you IMMEDIATELY REFUND TO MURRAY ALL FUNDS PAID TO YOU BY MURRAY, AS WELL AS PROVIDING COMPENSATION TO MURRAY FOR ALL DAMAGES AND LOSSES SUFFERED BY MURRAY TO DATE ATTRIBUTABLE TO AND REASONABLY FLOWING FROM THE FAILURE OF THE PAVER TO OPERATE PROPERLY, AND AS A DIRECT RESULT OF THE BREACH BY YOU OF THE SALES CONTRACT BETWEEN MURRAY AND YOUR ORGANIZATION.

Very truly yours,

Peter F. Davis

Copies:

Andrew A. Andre, Vice-President/Branch Manager  
Ingersoll-Rand Equipment & Services Company  
300 Turnpike Road  
Southborough, Mass. 01772

Mr. Arnold G. Johnson, Jr., President  
Murray Paving & Reclamation, Inc.  
PO Box 329  
Framingham, Mass. 01702



Ingersoll-Rand | 200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677-8738

July 11, 2003

Peter F. Davis, Esq.  
50 Congress Street, Suite 630  
Boston, MA 02109

**Re: Murray Paving & Reclamation, Inc.**

Dear Mr. Davis:

Your June 25, 2003 letter to Messrs. Henkel and Schlesinger has been referred to me. I handle litigation for Ingersoll-Rand Company, indirect parent of Blaw-Knox Construction Equipment Corporation.

I am currently reviewing this matter, and I will be in touch once my review is completed. To expedite my investigation, please describe to me in writing the specific problems your client is currently experiencing with the paver in question.

Very truly yours,

A handwritten signature in black ink, appearing to read "John D. Soriano".

John D. Soriano  
Assistant General Counsel  
Litigation

JDS:cs

cc: Jim Plasynski, Esq.  
Mr. Andrew Andre

**PETER F. DAVIS**  
ATTORNEY AND COUNSELLOR-AT-LAW  
50 CONGRESS STREET, SUITE 630  
BOSTON, MASSACHUSETTS 02109

July 17, 2003

John D. Soriano, Esquire  
Assistant General Counsel  
Ingersoll-Rand  
200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677-8738

TELEPHONE: (617) 227-1344  
FACSIMILE: (617) 227-3674  
FACSIMILE: (617) 723-2844  
EMAIL: PFD@DAVISESQ.NET

**RECEIVED**

Re: Murray Paving & Reclamation, Inc.  
Sales Order No. 641-21990

JUL 21 2003

Dear Mr. Soriano:

**JOHN D. SORIANO**

Thank you for your letter of July 11, 2003, replying to my earlier letter to Messrs. Henkel and Schlesinger. I would be pleased to discuss the matter to you following your review.

In the meantime, in response to your inquiry, the following is at least a partial listing of the problems encountered by Murray Paving, relative to the paver. It is my understanding that these problems have previously been brought to the attention of Ingersoll-Rand personnel. (This listing is not necessarily in chronological order, and may well be incomplete.)

1. Hopper doors would not raise. A hydraulic cylinder had to be replaced. When the doors still would not raise, I-R personnel increased the hydraulic pressure from a factory recommended setting to a substantially higher setting (1800 lbs to 3000 lbs.)
2. There was a hydraulic leak at the manifold, due to a loose connection, causing oil to be blown out all over a project, with ensuing environmental damage.
3. Factory welding on the exterior doors was sub-standard and incomplete, causing/permitting mix to enter the unwelded area, which separated the steel and caused a mark in the mat.
4. Exterior doors would not close properly, due to alignment problem.
5. Screeed would not lower, caused by a wiring problem. A wiring harness was not long enough, causing stretching, which resulted in broken wire, which led to a short-circuit in the system.
6. Auger exterior stop broke off, due to broken bolts.

7. Screw handles would not operate properly; two hands were needed to turn handles, rather than the handling turning easily with a single hand.

8. Arm rest on seat fell off.

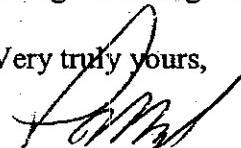
9. Shim dropped out of screed.

10. Screed would not lower on multiple occasions.

It is my understanding that notwithstanding virtually continuous efforts by I-R personnel, paver would not operate without breakdowns, and downtime on the paver was essentially equal to operating time! Paver operation was and is so undependable that Murray Paving has not been willing - let alone able - to use the paver, and the quarter-million dollar expenditure for a virtually worthless machine has been a disaster for Murray Paving, keeping in mind that paving operations require continuous and reliable use of the machine.

Under these circumstances, Murray Paving has determined that its only recourse is to declare I-R and Blaw-Knox to be in breach of the purchase contract, to demand rescission and termination of the contract, to demand a full refund of the purchase price, and to insist on compensation for all damages flowing from the breach.

Very truly yours,



Peter F. Davis

Copy: Mr. Arnold G. Johnson, Jr., President

**PETER F. DAVIS**  
ATTORNEY AND COUNSELLOR-AT-LAW  
50 CONGRESS STREET, SUITE 630  
BOSTON, MASSACHUSETTS 02109

August 6, 2003

John D. Soriano, Esquire  
Assistant General Counsel  
Ingersoll-Rand  
200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677-8738

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EMAIL: PFD@DAVISESQ.NET

**RECEIVED**

Re: Murray Paving & Reclamation, Inc.  
Sales Order No. 641-21990

AUG 11 2003

Dear Mr. Soriano:

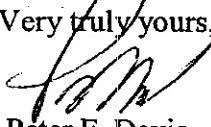
**JOHN D. SORIANO**

You wrote to me on July 11, 2003, requesting details, as a follow-up to my demand letter of June 25, 2003.

I replied by letter dated July 17, 2003.

I have not heard from you since that time regarding my client's claim.

To make sure that we have explored all aspects of this unfortunate episode prior to litigation, may I hear from you relative to the position of Ingersoll-Rand and Blaw-Knox.

Very truly yours,  
  
Peter F. Davis

Copy: Mr. Arnold G. Johnson, Jr., President



Ingersoll-Rand | 200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677-8738

September 5, 2003

Peter F. Davis, Esq.  
50 Congress Street, Suite 630  
Boston, MA 02109

**Re: Murray Paving & Reclamation, Inc.**

Dear Mr. Davis:

I have your August 6 letter, which I received while out on vacation.

I understand the paver in question was recently in for warranty service. I have requested details as to that service. Once I receive those details, I will be in touch with our position.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. D. Soriano".

John D. Soriano  
Assistant General Counsel  
Litigation

JDS:cs

cc: Mr. Andrew Andre

**PETER F. DAVIS**  
ATTORNEY AND COUNSELLOR-AT-LAW  
50 CONGRESS STREET, SUITE 630  
BOSTON, MASSACHUSETTS 02109

September 30, 2003

TELEPHONE: (617) 227-1344  
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John D. Soriano, Esquire  
Assistant General Counsel  
Ingersoll-Rand  
200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677-8738

**RECEIVED**

Re: Murray Paving & Reclamation, Inc.  
Sales Order No. 641-21990

OCT 03 2003

Dear Mr. Soriano:

**JOHN D. SORIANO**

Your most recent letter to me, dated September 5, 2003, which was in response to my August 6, 2003, letter, promised a further response, when you had received some details, presumably from the Southborough facility.

I have not heard from you, notwithstanding your statements, and now Murray has again been subjected to leaking of hydraulic fluid from the track tension cylinder.

We have exchanged far too much correspondence, with reference to the above matter.

Please be advised that Murray's patience has been exhausted, and my instructions are to write this letter - a final letter - and then commence litigation, unless a realistic response is received immediately.

Very truly yours,

Peter F. Davis

Copy: Mr. Arnold G. Johnson, Jr., President



Ingersoll-Rand | 200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677-8738

October 3, 2003

Peter F. Davis, Esq.  
~~50 Congress Street, Suite 630~~  
Boston, MA 02109

**Re: Murray Paving & Reclamation, Inc.**

Dear Mr. Davis:

As indicated in my September 5 letter to you, I have obtained the documents related to the warranty service performed on your client's paver.

My review of these documents indicates that the problems with the paver have been resolved by the warranty service. In light of this fact, and in accordance with sections 8 and 9 of the Terms and Conditions governing this contract, IR believes it has fulfilled its obligations to your client.

Please let me know if you have any comments or questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "John D. Soriano".

John D. Soriano  
Assistant General Counsel  
Litigation

JDS:cs

cc: Mr. Andrew Andre

PETER F. DAVIS  
ATTORNEY AND COUNSELLOR-AT-LAW  
50 CONGRESS STREET, SUITE 630  
BOSTON, MASSACHUSETTS 02109

October 10, 2003

TELEPHONE: (617) 227-1344  
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FACSIMILE: (617) 723-2844  
EMAIL: PFD@DAVISESQ.NET

Ingersoll-Rand Equipment & Services Company  
✓ 300 Turnpike Road, Route 9  
Southborough, Mass. 01772

and

Ingersoll-Rand Company  
200 Chestnut Ridge Road  
Woodcliff, NJ 07675

Re: Mass. Gen. Laws, Ch. 93A Demand Letter  
Murray Paving & Reclamation, Inc.  
Sales Order No. 641-21990

Gentlemen:

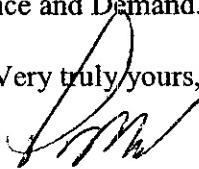
Please be advised that I represent Murray Paving & Reclamation, Inc. ("Murray"), to whom your organization sold a new Blaw-Knox 2003 Model PF-4410 Paver ("the Paver"), as set forth in the above referenced order.

I have had substantial correspondence with you and your attorney regarding "the Paver". The most recent response, by your attorney, was to deny any relief to Murray, on the ground that sufficient warranty repairs had been made.

Please be advised that your ultimate response is unsatisfactory, and is, in my opinion, an actionable violation of Mass. Gen. Laws, ch. 93A.

Accordingly, DEMAND is hereby made upon you for the return to Murray of the full purchase price, as well as compensation to Murray for all losses suffered to date by Murray, in connection with this transaction. The purchase price was \$236,775.00 plus the delivery to you of a machine having a value of at least \$12,000.00. Murray's out-of-pocket costs and the value of lost working time directly attributable to the failure of the paver to perform total approximately \$100,000.00. Murray has suffered additional losses directly attributable to the unsatisfactory performance and condition of the paver.

Mass. Gen. Laws, Ch. 93A specifically protects someone situated as is Murray from conduct such as has been displayed by your organization, and requires you, in the event Notice and Demand are made upon you, to make a good faith response and offer of settlement within 30 days of such Notice and Demand.

Very truly yours,  
  
Peter F. Davis

Copy - John D. Soriano, Esquire

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
To both addressees

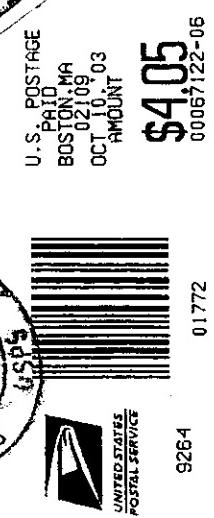
**CERTIFIED MAIL**

7001 0320 0003 3467 7007

Peter F. Davis  
Attorney At-Law  
50 Congress Street, Suite 630  
Boston, MA 02109-4018

**NAME** 10/11/03  
**1st Notice**   
**2nd Notice**   
**Return**

Ingersoll-Rand Equipment & Services  
Company  
300 Turnpike Road, Route 9  
Southborough, Mass. 01772



01772

9264

**E. DAVIS**  
UNSELLOR-AT-LAW  
REET, SUITE 630  
HUSETTS 02109

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Oct 10, 2003

my

and Letter  
Inc.

Paving & Reclamation, Inc. ("Murray"),  
ox 2003 Model PF-4410 Paver ("the  
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Ingersoll-Rand | 200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677-8738

October 21, 2003

Peter F. Davis, Esq.  
50 Congress Street, Suite 630  
Boston, MA 02109

**Re: Murray Paving & Reclamation, Inc.**

Dear Mr. Davis:

Ingersoll-Rand Company ("IR") is in receipt of your October 10, 2003 letter.

At the outset, please note that your October 10 letter fails to meet the requirements of a "written demand for relief" pursuant to Section 9(3) of Mass. Gen Laws, ch. 93A as it does not "reasonably describe [] the unfair or deceptive act or practice relied upon."

In any event, as already set forth in my October 3 letter to you, we consider your client's claim to be meritless. IR has honored, and will continue to honor, its warranty obligations. Indeed, IR has gone above and beyond these obligations by offering to rebuild a unit for your client, which your client has rejected.

Furthermore, as noted in my October 3 letter, Section 9 of the governing contract unambiguously limits the amount and categories of damages for which IR is liable. For example, Section 9 limits IR's liability to the purchase price and expressly excludes liability for any consequential, incidental, indirect, special or punitive damages. I urge you review these contractual provisions, as IR will consider any claim which asserts such damages to be frivolous.

However, IR would like to maintain a good relationship with your client, and rest assured that IR will continue to honor its warranty obligations.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John D. Soriano'.

John D. Soriano  
Assistant General Counsel  
Litigation

JDS:cs

cc: Mr. Andrew Andre  
Jim Chamberlain, Esq.